

State of South Dakota

FY 2014 Mid-Year Meeting

May 19, 2014 EPA R8 Administrator @SDDENR
EPA staff via Teleconference 9:00 to 11:00 am (Mountain Time)
RA's Conference Room for EPA Region 8

Conference Number(s) : Ex. 6 Personal Privacy (PP)
Participant Code: Ex. 6 Personal Privacy (PP)

Attendees:

Department Environment & Natural Resources (DENR) Attendees:

Steve Pirner-Secretary DENR

Dave Templeton - Financial & Tech Assistance Division Director

Tim Tollefsrud - Environmental Services Division Director

Vonni Kallemeyn - Waste Management Program **Mark Mayer** - Drinking Water Program

Kent Woodmansey - Feedlot Permit Program **Kelli Buscher** - Surface Water Quality Program

Brian Gustafson - Air Quality Program **Bill Markley** - Ground Water Quality Program

Jim Feeney - Water Resources Assistance Program **Rob Green** - Finance Officer

Mark Lawrensen - Environmental Scientist IV

EPA Region 8 Attendees:

Shaun McGrath – Regional Administrator, EPA Region 8

Howard Cantor – Deputy Regional Administrator, EPA Region 8

Patrice Kortuem – Acting Assistant Regional Administrator, Office of Technical and Management Services

Suzanne Bohan – Acting Deputy Assistant Regional Administrator, Office of Technical and Management Services

Deb Thomas – Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance

Callie Videtich – Deputy Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance

Eddie Sierra – Acting Assistant Regional Administrator, Office of Enforcement, Compliance & Environmental Justice

Darcy O'Connor - Acting Deputy Assistant Regional Administrator, Office of Enforcement, Compliance & Environmental Justice

Martin Hestmark - Assistant Regional Administrator, Office of Ecosystems Protection and Remediation

Sandra Stavnes – Deputy Assistant Regional Administrator, Office of Ecosystems Protection and Remediation

Paul Logan – Deputy Regional Counsel, Office of Regional Counsel

Melanie Wood - Director, Partnerships and Environmental Stewardships Program

Anthony DeLoach – South Dakota PPA/PPG State Program Manager

Agenda	Lead
Introductions	Steve Pirner Shaun McGrath
State Discussion Topics 1) None identified yet	Steve Pirner
EPA Discussion Topics 1) <u>Proposed UIC Actions at Powertech</u>	Shaun McGrath

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Topic: Proposed Underground Injection Control (UIC) Actions at Powertech (USA) Inc.'s Dewey Burdock Uranium In-Situ Recovery (ISR) Site

Background:

- The EPA Region 8 UIC program is preparing to issue:
 - 1) a Class III permit for injection wells related to uranium recovery; and
 - 2) a Class V permit authorizing deep injection wells to dispose of treated ISR process waste fluids.
- Because South Dakota prohibits Class I injection wells, the deep disposal wells will be Class V for which injected fluids must be treated to meet radioactive waste standards as specified under NRC regulations. The injectate cannot contain any hazardous constituents.
- In addition to the UIC permit decisions, the Region 8 UIC program is evaluating Powertech's Class III aquifer exemption request that would enable injection into the Inyan Kara Group aquifers which host the uranium ore deposits.
- For EPA to issue an aquifer exemption for the Class III well field areas, it must be shown that the applicable aquifer does not currently serve as a source of drinking water, and that it cannot now and will not in the future serve as a source of drinking water because it contains commercially producible uranium ore.
- The EPA is engaged in tribal consultation activities as required under Section 106 of the National Historic Preservations Act and under the EPA Tribal Consultation Policy.
- The EPA is also in consultation with the US Fish and Wildlife Service as required under the Endangered Species Act.
- The NRC's operating license issued on April 8 was temporarily stayed by the NRC's Atomic Safety and Licensing Board (ASLB) on April 30. The ASLB will hear oral arguments on May 13 to determine if the stay should remain in effect until the NRC holds its contested case hearing in August.
- The EPA understands that the NRC license and the DENR large scale mine permit will regulate the whole site including operation, aquifer restoration, and site closure.
- The EPA understands that DENR's governing boards have suspended final decision making on its large scale mine, groundwater discharge and water rights permits until EPA makes its final decisions on issuance of its UIC permits and associated aquifer exemption.

Key RA Messages:

- We want to update you on the status of EPA's proposed UIC actions for this important and high visibility project to ensure continued close coordination with the DENR.
- The EPA's role is to permit injection wells at this site (northwest of Edgemont) and to make an aquifer exemption decision.
- The decision to issue UIC Class III/V permits for uranium ISR would be EPA's first nationwide.
- The EPA has not set a date for issuance of the draft UIC permit decisions. Our permit issuance process will include a 60 day public comment period, public hearings, and tribal consultation.

Contact: Douglas Minter, 312-6079

Air Program Informational Only:
Not Requesting as a Midyear Agenda Item

Topic: Minor NSR Pre-Permit Construction SIP Submittal

Key Points:

- We have a May 30th final action Consent Decree deadline to act on South Dakota's June 14, 2010 and June 20, 2011 SIP submittals.
- Our proposed action published on April 16, 2014 for a 30-day comment period. We proposed to approve the June 14, 2010 submittal and partially approve/disapprove the June 20, 2011 submittal.
- South Dakota will very likely comment adversely on our proposed disapproval of a new rule for the state's minor source permitting program. This new rule allows a minor source to begin construction or modification prior to receiving a pre-construction permit.
- South Dakota's adverse comment will likely focus on the fact that Region 7 approved identical pre-permit construction language for Iowa in 2002, and that EPA should approve the same language for South Dakota for equity reasons.

Background:

In 2011, South Dakota submitted SIP language for its minor source permitting program that allows a source to begin construction, or a modification, with certain restrictions prior to a pre-construction permit being issued. The proposed regulatory language places obligation/liability on the source and prohibits operation of the source without a permit. Sources must be true minors and not seeking a permit to obtain an enforceable condition (i.e., rules out Prevention of Significant Deterioration, nonattainment New Source Review, New Source Performance Standard or National Emissions Standard for Hazardous Air Pollutant sources).

South Dakota's proposed language is nearly identical to Iowa's 2002 SIP approved minor source provisions. Region 8 expressed concerns about the state's proposed rule in a January 2011 comment letter, because it lacked administrative approval prior to construction. The state also received numerous comments on this issue during its public comment period. The state did not fully respond to these comments nor was the proposed rule revised to include this approval provision.

Region 8 has approved SIP language for Montana allowing certain limited, seasonal, pre-permit construction activities. However, Montana's SIP language specifies which activities are allowed, and excludes construction of any emitting unit.

Key RA Messages:

- We worked with OAQPS and surveyed the Regions to find out if any other states had a SIP approved rule allowing for complete construction of a minor source prior to a permit being issued. Iowa is the only state EPA has approved. This issue was briefed to Tom Powers and he supported our proposed disapproval of South Dakota's rule in order to maintain national consistency with the requirements of our minor source pre-construction permitting requirements.

- Carl Daly has heard from South Dakota's State Air Director, Brian Gustafson, that they may be willing to work with us (after we have taken final action) to develop an approvable SIP (possibly similar to Montana's allowance of limited, seasonal construction).

Contact: Carl Daly, 312-6416

INFORMATION ONLY FOR RA/DRA – Air Program Not Requesting as a Midyear Agenda Item

Topic: CAA Section 111(d) Standards for Existing Power Plants

[Based on the midyear meeting date there will be different key RA messages.]

Background:

Timeline:

Proposed Rule due on June 1, 2014

Final Rule due on June 1, 2015

State Plans due to EPA on June 1, 2016

- EPA is on track to propose the 111(d) rule by the June 1 due date [which may end up being the Friday before or the Monday after as June 1 is a Sunday]
- We understand that EPA is preparing a list of tools and resources that states might find useful in the development of their 111(d) State Plans, as are other organizations
- We do not have clarification on the exact nature of the 111(d) State Plan approval process. We expect the process will not need to follow the traditional SIP process (and be subject to its legal ramifications); however, we will not know for sure how this process will be implemented until the proposed rule is issued.

Key RA Messages:

- EPA is on track to propose the CAA Section 111(d) rule to limit CO2 emissions from existing power plants by the June 1 due date set by the President. This date may end up being the Friday before or the Monday after as June 1 is a Sunday.
- We don't have any details on the rule to share with you at this time, but we can discuss this more at the June 25 State Director's Meeting.
- At that time, we will be able to discuss things like the scope of the reductions, the baseline year and compliance timeline, the nature and timing of the State Plans, etc.
- We also understand that EPA is preparing a list of tools and resources that states might find useful in the development of their 111(d) State Plans.

Contact: Laura Farris, 312-6388

INFORMATION ONLY FOR RA/DRA – Air Program Not Requesting as a Midyear Agenda Item

Topic: CAA Section 111(b) Standards for New Power Plants

Background:

Timeline:

Proposed Rule signed on September 20, 2013

Proposed Rule published in Federal Register on January 8, 2014 [which also rescinded the April 2012 Proposal]

Public Comment Period extended until May 9, 2014

Public Hearing held on January 28, 2014 in Washington, D.C.

Final Rule to be completed in a timely manner

Key RA Message:

EPA is taking comment until May 9 on the proposed CAA Section 111(b) rule to limit CO2 emissions from new power plants.

Contacts: Laura Farris, 312-6388

Water Program Not Requesting as a Midyear Agenda Item

Topic: South Dakota Underground Storage Tank Clean Up Funding – Federal Leaking Underground Storage Tank (LUST) Trust Funds and the South Dakota Petroleum Release Compensation Fund (SDPRCF)

Key Points:

- The Region 8 UST Program has identified an issue with South Dakota's use of federal LUST Trust Funds. The state has not conducted cost recovery of LUST trust funds expended under its current and historical assistance agreements as required by statute and the terms and conditions of its agreements.
- South Dakota has spent federal LUST Trust Funds on LUST sites that were eligible for the State petroleum release compensation fund (PRCF). The state PRCF should have reimbursed the Fund for LUST expenditures at eligible sites.
- Over \$10 Million dollars of federal LUST Trust funds have been spent on LUST cleanups. Region 8 is evaluating how much of these funds should be reimbursed.

Background/Status:

- EPA Region 8 identified during the 2013 State Fund Review that the average cost of cleanup for SD was approximately \$18,000 which is considerably less than the national average cost of approximately \$150,000. A further investigation revealed that many cleanups were referred from SDPRCF to the SD LUST program where they may not have been eligible for the LUST funding.
- The UST Program has been working with the state since December on an action plan to resolve this issue.
- The State has provided EPA with a list of LUST sites where federal LUST trust dollars were spent with the amount of funds spent and an initial determination of PRCF eligibility.
- The State is drafting a standard operating procedure (SOP) for reimbursement of federal LUST trust funds from the PRCF (due April 30, 2014).

Key RA Messages:

- South Dakota has spent federal LUST Trust Funds on LUST sites that were eligible for reimbursement by the State petroleum release compensation fund (PRCF). The SD LUST program should be reimbursed by the PRCF for the cleanup costs at eligible sites.
- The Region and the State are working together collaboratively to resolve this issue.

Contacts: Francisca Chambus, 312-6782; Janice Pearson 312-6354

Topic: Proposed rule to define Waters of the US

Key Points:

- The Agency always viewed tributaries as falling under the protection of the Clean Water Act whether they were perennial, tributary, ephemeral, or intermittent. The water quality standards adopted by R8 states include these waters. The proposed rule provides scientific justification for a significant nexus to these kinds of waters.
- EPA does not expect this proposed rule to affect how it has viewed NPDES permit requirements or expectations for TMDLs. The State maintains its discretion for the design and implementation of its monitoring and assessment program for 305b reporting. EPA does not anticipate changing how it reviews lists of impaired waters bodies under Section 303(d). EPA does not foresee an increase in State workload in these programs.
- Depending on the Corps District, some waters may require Clean Water Act Section 404 permits that the District, as a conservative approach, did not require in the last 8 years or more, given uncertainties presented by the Supreme Court decisions.
 - Based on our experience in Region 8, if there are additional 404 permits that the Corps would now require, they would likely be nationwide permits; how the state wishes to handle any required 401 certifications for them would be at the state's discretion. Existing 401 certification templates or Regional General Permits (e.g., in Utah) will continue to be efficient mechanisms.
- Regardless of whether a water is a Water of the US or not, existing agricultural activities that are exempted from permitting requirements remain exempted. *Additional* exemptions that meet NRCS technical standards for water quality improvement or protection have been incorporated in an interpretive rule.
- The Clean Water Act Section 101(g) specifically states that the Act does not impair or abrogate the authority of States to allocate quantities of water within its jurisdiction.
- The Clean Water Act does not regulate nonpoint sources of pollution (runoff) such as irrigation return flows.

Background/Status:

- The proposed rule provides clarification regarding which waters are protected by the Clean Water Act in response to requests from industry, environmental groups, elected officials and the Supreme Court following two Supreme Court decisions in 2001 and 2006.
- The proposed rule provides a robust scientific basis for establishing a significant nexus of proposed protected categories as instructed by the Supreme Court. The proposed rule does not expand authority beyond Supreme Court instructions and historical practices, policy or regulations.
- EPA and the Corps urge people to provide comments and recommendations, particularly in specific areas such as how to evaluate the category of "other waters."
- The proposed rule was published in the Federal Register April 21, 2014; comments are due July 21, 2014.

Contacts: Karen Hamilton, 312-6236

INFORMATION ONLY FOR RA/DRA – CERCLA Program Not Requesting as a Midyear Agenda Item

Topic: Darrow/Freezeout/Triangle Uranium Mines Northwest of Edgemont, South Dakota

Key Points:

- In response to a citizen petition under CERCLA Section 105(d), the EPA Superfund Program is conducting, isn't done yet, a Preliminary Assessment (PA) at these historic open pit and shallow underground mines located within the proposed boundary of the Dewey Burdock Uranium In-Situ Recover site.
- The findings of the PA are that there is a potential for a release of hazardous substances from the site but there is insufficient data to evaluate threats to receptors or if the site is eligible for placement on the National Priorities List (NPL). The primary threats identified in the PA are impacts to private drinking water supplies and ecological impacts.
- The EPA is planning to conduct a Site Investigation to evaluate potential threats and determine if the site is eligible for the NPL. The SI will allow EPA and the State to discuss the need for remediation of the historic mines and to discuss possible options for cleanup.
- The results of the PA or subsequent SI are not expected to impact the ongoing permitting process of the Dewey Burdock Uranium In-Situ Recovery Project.

Background:

- The PA investigation gathered existing information on the abandoned uranium mines. The data provided in the Environmental Impact Statement was reviewed as part of this PA.
- The PA is scheduled to be released to the public in late Spring/early Summer, 2014.
- A PA is designed to determine if a site poses a threat to human health or the environment and whether the threat requires further investigation. This information is used to evaluate the pathways with which the contamination may migrate and identify populations and environments that the contamination may pose a threat to.

Contacts: Dania Zinner, 312-7122; Victor Ketellapper, 312-6578